

THE MARRIAGE INSTITUTION

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their heads the spouses are equally rich/' that is, they have all property of either in common.¹ Hence, in German law and custom, *consensus* followed by *concubitus* made marriage. Hence also arose the custom that the witnesses accompanied the spouses to their bedchamber and saw them covered, or visited them later. Important symbolic acts were connected with this visit. The spouses ate and drank together. The guests drove them to bed with blows.² The witnesses were not to witness a promise, but a fact. In the Carolingian period, except in forged capitularies, there is very little testimony to the function of priests in weddings.

The custom of the Jews has been mentioned above (sec. 417). Selected witnesses were thought necessary to testify at any time to the consummation of the marriage. In the third century B.C. this custom was modified to a ceremony.³ In ancient India and at Rome newly wedded spouses were attended by the guests when they retired.⁴ The Germans had this custom from the earliest times and they kept it up through the Middle Ages. The jural consequences of marriage began from the moment that both were covered by the coverlet. This was what the witnesses were to testify to. Evidently the higher classes had the most reason to establish the jural consequences. Therefore kings kept up this custom longest, although it degenerated more and more into a mere ceremony.⁵ The German Emperor Frederick III met his bride, a Portuguese princess, at Naples. The pair lay down on the bed and were covered by the coverlet for a moment, in the presence of the court. They were fully dressed and rose again. The Portuguese ladies were shocked at the custom.⁶ The custom can be traced, in Brandenburg, as late as the beginning of the eighteenth century.⁷ English customs of the eighteenth century to seize articles of the bride's dress were more objectionable.

The church ceremony, however, won its way in popular usage.

It consisted in blessing the ring and the gifts, and the interest of ecclesiastics began to be centered on the question whether the persons to be married were within the forbidden degrees of relationship.⁸ In the *Petri Exceptiones* (between 1050 and 10/S)⁹

¹ Freisen, 118.

² Friedberg, 23.

⁸ Freisen, *JZ'anon. Mherecht* ^ 92, 96; Bergel, *Ekeverhalt. der Juden*, 19.

⁴ Rossbach, *Rom. Ehe*, 370.

⁵ Weinhold, *D. F.*, I, 399.

⁶ *Gesck. Fried. Iff*, by /Eneas Silvius, trans. Ilgen, II, 95.

^r Friedberg, *Recht der Eheschliessung*, 23. ⁸ Friedberg, 58.

⁹ Savigny, *Gesck. des Rom, Rechts im M. A* ^ II, *Append.*